

THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

SCOTT RICHARD PENDERGRAFT
and DANIELLE-PAULINE
PENDERGRAFT

DEBTORS

NETWORK OF NEIGHBORS, INC.

PLAINTIFFS

VS.

SCOTT RICHARD PENDERGRAFT
and DANIELEE-PAULINE
PENDERGRAFT

DEBTORS

CASE NO. 09-31423
(CHAPTER 7)

ADVERSARY NO. 12-03445

EMERGENCY MOTION OF NETWORK OF NEIGHBORS, INC., SQUIRE RUSHNELL
AND LOUISE DUART TO (I) COMPEL HOLIDAY PUBLIC RELATIONS & EVENTS,
LLC TO COMPLY WITH DEPOSITION SUBPOENA; AND (II) COMPEL
DEPOSITION APPEARANCE OF DANIELLE PENDERGRAFT

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.¹

Defendant, Network of Neighbors, Inc. (“NON”) and Third Party Defendants, Squire Rushnell and Louise DuArt (collectively the “Rushnells”) hereby submit this Motion to (i) Compel Holiday Public Relations & Events, LLC (“Holiday”) to Comply with Deposition Subpoena and (ii) Compel Deposition Appearance of Danielle Pendergraft and, in support hereof, state as follows:

1. Holiday Public Relations & Events, LLC (“Holiday”) is a Texas limited liability company whose registered agent is attorney David Kuntz of Richmond, Texas. Holiday is controlled by debtors, Scott and Danielle Pendergraft.

2. Holiday failed to comply with a subpoena requiring Holiday to produce documents and appear for a deposition on November 5, 2013.

3. On November 8, 2013, NON and the Rushnells filed a Motion to Compel Holiday to Produce Documents and Appear for Deposition (the “Motion to Compel”).

4. By Order dated December 16, 2013 (the “Order”), the Court granted the Motion to Compel and ordered Holiday to (i) produce documents; and (ii) designate a corporate representative to testify on its behalf.

5. On December 30, 2014, Holiday designated Ms. Pendergraft as its corporate representative. A true and correct copy of the designation is attached hereto as Exhibit A.

¹ Certificate of Conference: On February 13, 2014, following the Court’s entry of the Order Denying Holiday’s Motion to Quash, the undersigned e-mailed Reese Baker and David Kuntz to advise that the Holiday deposition could be rescheduled to February 17 or 18, 2014, provided that Holiday provide written confirmation that it would appear on one of those dates. No such confirmation has been received.

Holiday otherwise failed to comply with the Order.

6. On January 10, 2014, the undersigned sent a detailed letter to Mr. Kuntz with respect to Holiday's failure to comply with the Order. A true and correct copy of the letter is attached hereto as Exhibit B. Holiday ignored the letter.

7. On January 29, 2014, NON and the Rushnells served a deposition subpoena on Holiday through Mr. Kuntz, Holiday's registered agent, requiring Holiday to appear for deposition on February 14, 2014. On February 13, 2014, Holiday filed a Motion to Quash which was summarily denied by the Court.²

8. By e-mail dated February 13, 2014, the undersigned notified Reese Baker and David Kuntz that NON and the Rushnells would agree to reschedule Holiday's deposition to February 17 or 18, 2014, provided that Holiday provide written confirmation of its intention to appear on one of those dates. Holiday has provided no such confirmation.

9. NON and the Rushnells have discovered that Danielle Pendergraft (a/k/a Danielle Ravitch, a/k/a Danielle Dobiecki) has been subpoenaed to appear before the United States Attorney at 1000 Louisiana, Suite 2300, Houston, Texas 77002 at 9:30 a.m. February 19, 2014. A true and correct copy of the subpoena is attached hereto as Exhibit C.

10. It is clear that Ms. Pendergraft has no intention of appearing voluntarily as Holiday's corporate representative. She has ignored two deposition subpoenas as well as this Court's Order denying Holiday's a Motion to Quash.

11. It appears that Ms. Pendergraft is going to be in Houston on February 19, 2014. NON and the Rushnells request that the Court issue an Order to be served by the United States

² The Motion to Quash was filed in violation of Local Bankruptcy Rule 9013-1(b) and (i) and was not signed by an attorney. The Motion to Quash was filed electronically by Maricela Perez. NON and the Rushnells do not know the attorney with whom Ms. Perez is affiliated.

Marshall, requiring Ms. Pendergraft to appear at the offices of NON's counsel on February 20, 2014 at 10 a.m. to give testimony pursuant to the subpoenas served on Holiday. NON and the Rushnells also request an award of their attorney's fees of \$750.00.

WHEREFORE, NON and the Rushnells respectfully request that the Court enter an Order (i) compelling Holiday to comply with the Deposition Subpoena; and (ii) compelling Danielle Pendergraft to appear and give testimony at the offices of NON's counsel at 10 a.m. February 20, 2014. NON and the Rushnells further request an award of their attorney's fees and such other and further relief to which they may show themselves entitled.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

By: /s/ Michael P. Ridulfo
Michael P. Ridulfo
State Bar No. 16902020
Federal Bar No. 27086
Angela N. Offerman
Texas Bar No. 24051130
915 Milam Street, Suite 2200
Houston, Texas 77002
(713) 425-7400
(713) 425-7700 (fax)

Bruse Loyd
State Bar No. 24009032
Jones, Gillaspia & Loyd, L.L.P.
1300 Post Oak Blvd., Suite 830
Houston, Texas 77056

**ATTORNEYS FOR NETWORK OF
NEIGHBORS, INC., SQUIRE RUSHNELL
AND LOUISE DUART**

EMERGENCY CERTIFICATION

The undersigned hereby certifies that a genuine emergency exists with respect to this Motion because Danielle Pendergraft is scheduled to be in Houston, Texas on February 19, 2014.

/s/ Michael P. Ridulfo

Michael P. Ridulfo

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2014, a true and correct copy of the foregoing document was served, via ECF, electronic mail and regular U.S. mail, on the following:

Reese W. Baker
5151 Katy Freeway, Suite 200
Houston, TX 77007

David Kuntz
9131 Crown Jewel Dr.
Richmond, Texas 77469
thekuntzlawfirm@gmail.com

/s/ Michael P. Ridulfo
Michael P. Ridulfo